

Proposed Amendments to Civil Service Rules

# **Disbursements for Personal Services outside the Classified Service**

Revision A (August 29, 2001)

## **Outline of Principal Proposed Amendments:**

1. Add new Rule 7-2, Jurisdiction. Lists the disbursements over which the Commission has **no** jurisdiction.
    - §(b): Convert old Standard E into a jurisdictional statement.  
[Also, change in terminology: delete term “mixed contract” and replace it with term “combined disbursements.”]
    - Add the following from Regulation 7.01:
      - §(c): Grants [and add definition of “grant” in Rule 9-1].
      - §(d): Federal law.
      - §§(e) and (f): Inter- and intra-governmental disbursements.
      - §(g): Exempt and excepted state employees.
  2. Rule 7-3, Standards for Disbursements for Personal Services.
    - Revise Standards A and B.
    - Repeal Standard E [But, see new Rule 7-2(b)]
  3. New Rule 7-6, Prior Written Approval by Civil Service Staff.
    - Add §7-6.2, Approval. Lists the requirements for civil service approvals.
    - Add §7-6.5, Compliance. Describes the requirements with which an appointing authority must comply.
  4. Rule 7-6, Decentralized Procedure. Repeal in its entirety.
  5. Rule 7-9.3, Appeal of Director’s Determination. In addition to the appointing authority, also permit a *person filing a complaint* and the *state employer* to appeal to the commission a state personnel director determination under the Complaint and Investigation section.
  6. Rule 9-1, Definitions. Delete definitions of “contract for personal services” and “mixed contract.” Add definitions of “disbursements for personal services outside the classified service” and “grant.”
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Proposed Amendments to Civil Service Rules  
**Disbursements for Personal Services  
outside the Classified Service**

Revision A (August 28, 2001)

Added text is underlined. Deleted text is ~~struck through~~.

# CHAPTER 7

## DISBURSEMENTS FOR PERSONAL SERVICES OUTSIDE THE CLASSIFIED SERVICE

**STAFF COMMENTS to Title of Chapter 7:** The phrase “outside the classified service” is added to clarify that Chapter 7 addresses *only* those disbursements for personal services that are made to contractors outside the classified service.

Also, see proposed definition of “disbursements for personal services outside the classified service” in Rule 9-1.

### 1 7-1 Disbursements for Personal Services outside the 2 Classified Service

#### 3 7-1.1 Requirements

4 An appointing authority shall not make or authorize disbursements ~~under a contract~~ for  
5 personal services outside the classified service until the provisions of article 11, section 5, of

the constitution ~~and, these~~ civil service rules, and regulations ~~issued by the state personnel director~~ have been complied with in every particular.

**STAFF COMMENTS to Rule 7-1.1:** The proposed amendments are only conforming changes.

## 7-1.2 Disapproval by State Personnel Director

If an appointing authority makes or authorizes disbursements for personal services outside the classified service in violation of article 11, section 5, of the constitution or an applicable civil service rule or regulation, the state personnel director may disapprove any further disbursements by written order. If an appointing authority fails or refuses to comply with an order of the director, the director is authorized to take all appropriate action, including filing a civil action, to compel compliance with the disapproval order.

## 7-2 Jurisdiction

### 7-2.1 Civil Service Review or Approval not Required

An appointing authority is not required to seek or obtain civil service approval for any of the following disbursements outside the classified service:

(a) Not personal services. Disbursements that are not for personal services.

(b) Combined disbursements. Disbursements for personal services that are combined with other disbursements if (1) the predominant purpose of the combined disbursements is not for personal services and (2) the personal services are logically or practically related to the predominant purpose of the combined disbursements.

(c) Grants. Disbursements of grants.

(d) Federal law. Disbursements under federal law if the use of the classified service is not an option.

1 **(e) Intergovernmental disbursements.** Disbursements to any of the following  
2 governments or their political subdivisions:

3 (1) One or more of the states of the United States.

4 (2) The United States.

5 (3) Canada.

6 **(f) Intragovernmental disbursements.** Disbursements to any of the following public  
7 bodies:

8 (1) An agency of the executive, judicial, or legislative branch of the state of Michigan.

9 (2) A political subdivision of the state of Michigan, including, but not limited to, a  
10 county, township, city, village, or district.

11 (3) Any governmental body created by agreement of any two or more counties,  
12 townships, cities, villages, or districts, as authorized by law.

13 (4) A nonprofit community board, agency, or corporation created under local, state, or  
14 federal law to exercise a governmental function.

15 (5) A public university, public college, public community college, or other public  
16 school.

17 **(g) Exempt and excepted employees.** Disbursements to persons occupying positions  
18 excepted from the classified service by article 11, section 5, of the constitution, or  
19 exempted by the state personnel director under rule 1-9.2 [Exempt Positions].

## 20 **7-2.2 Complaints**

21 A complaint that an appointing authority has made or authorized disbursements for personal  
22 services in violation of article 11, section 5, of the constitution or a civil service rule or  
23 regulation must be filed with the state personnel director under the procedures authorized in  
24 rule 7-9.

**STAFF COMMENTS to Proposed Rule 7-2:** The proposed rule addresses the jurisdiction of the civil service commission.

**§7-2.1** lists the various types of disbursements that agencies can make without civil service approval. That is, this is a list of disbursements over which the civil service commission does not have constitutional jurisdiction:

**§(a) Not Personal Services.** The commission's authority under article 11, §5, of the Michigan constitution extends only to disbursements for "personal services" and not to other types of disbursements (e.g., purchase of real property, equipment rental, etc.).

**§(b) Combined Disbursements.** The commission ruled in CSC 97-16 that it did not have jurisdiction over disbursements for personal services included in mixed contracts that were predominantly for things other than personal services. The Michigan court of appeals has now affirmed the commission's decision. [See unpublished decisions dated May 1, 2001, in *UAW Local 6000 v Dept of Labor*, COA Docket No. 222109 and *UAW Local 6000 v Dept of Consumer and Industry Services*, COA Docket No. 22301.] In 1997, as an interim measure, the commission approved Standard E in rule 7-2. Now that the court of appeals has affirmed the commission's constitutional interpretation, Standard E is no longer appropriate and should be repealed. This subsection replaces Standard E.

**§(c) Grants.** "Grants" are currently addressed in Regulation 7.01. "Grants" as defined in these rules are not "disbursements for personal services" and, therefore, are not subject to civil service review.

**§(d) Federal Law.** This issue is currently addressed in Regulation 7.01. If the federal law does not allow the state to use classified employees to provide the personal services, then civil service review or approval is not required for the state to disburse the federal funds outside the classified service.

**§(e) Intergovernmental Disbursements.** This issue is currently addressed in Regulation 7.01. This subsection recognizes that article 3, §5, of the Michigan constitution permits executive agencies to enter into agreements with the other listed governments.

**§(f) Intragovernmental Disbursements.** This issue is currently addressed in Regulation 7.01. This subsection recognizes that a decision by an executive agency to make disbursements to any of the other public agencies listed is not subject to civil service review or disapproval. [See, e.g., *MSEA v MDOT*, SPD 1998-24 (affirmed by the commission).]

**§(g) Excepted and Exempt Positions.** These are the positions in state government that state executive agencies are permitted to create outside the classified service under article 11, §5, of the Michigan constitution (e.g., elected officials, heads of principal departments, etc.).

**§7-2.2.** This section requires all complaints regarding an agency action to make or authorize disbursements for personal services to be brought under the complaint procedures in rule 7-9.

## 7-32 Standards for Disbursements for Personal Services

Except as provided in rule 7-2, An-an appointing authority may make or authorize disbursements for personal services outside the classified service under a contract for personal services only if the personal services meet one or more of the following standards:

(a) **Standard A.** The personal services are ~~so~~ temporary, intermittent, or irregular; ~~in nature that they cannot be provided efficiently through the classified service.~~

(b) **Standard B.** The personal services are ~~uncommon to the state classified service because they are (1)~~ so specialized, technical, peculiar, or unique ~~in character that the talent, experience, or expertise required to accomplish the duties and responsibilities cannot be they are not~~ recognized as normal to the state-classified service or (2) the appointing authority is unable to recruit enough qualified candidates willing to accept a classified position. ~~and cannot be efficiently included in the classification plan.~~

(c) **Standard C.** The personal services involve (1) the use of equipment, materials, or facilities not reasonably available to the agency at the time and place required and (2) the estimated cost to the agency in procuring such equipment or materials and establishing the needed positions would be disproportionate to the contract cost.

(d) **Standard D.** The personal services would be obtained at substantial savings over the proposed period of disbursements when compared with having the same personal services performed by the classified work force. The personal services do not meet this standard if, despite the savings over the proposed period of disbursements, substantial savings would not likely be realized over the long term. Savings are “substantial” if the average annual savings over the proposed period of disbursements are equal to or greater than the minimum required savings computed using the table below:

<b>Col. 1</b>		<b>Col. 2</b>
<b><u>Projected Average Annual Disbursements</u></b>		<b>Minimum Required Average Annual Savings</b>
<b><u>Cost of Contracting:</u></b>		<b>Must Equal:</b>
<i>From:</i>	<i>To:</i>	
\$ 1	\$ 25,000	25 % of avg. annual cost
25,001	50,000	20 % (minimum \$6,250)
50,001	100,000	15 % (minimum \$10,000)
100,001	200,000	12.5% (minimum \$15,000)
200,001	500,000	10 % (minimum \$25,000)
500,001	1,000,000	Minimum \$50,000
1,000,001	And above	5 % of avg. annual cost

~~(e) Standard E. The personal services in the request will be included in a mixed contract that meets each of the following tests:~~

~~(1) The mixed contract will be predominantly for things other than the performance of personal services.~~

~~(2) The personal services to be included are logically or practically related to the predominant nature of the contract.~~

**STAFF COMMENTS to Rule 7-3:** Two Standards are rewritten in light of recent litigation.

**Standard A.** There has been considerable litigation concerning the interpretation of Standard A. The commission has repeatedly held that Standard A is a single-step test that does not require separate proof of inefficiency:

“Standard A is satisfied if the agency can demonstrate that the personal services to be provided are ‘temporary, intermittent, or irregular.’ If the personal services are ‘temporary, intermittent, or irregular,’ it is *inherently inefficient* to use classified employees to provide the personal services. It is not necessary for the agency to marshal evidence to prove that it is less ‘efficient’ to use classified employees to provide the services.” *In re Department of Transportation*, CSC 2001-002.

Therefore, the proposed amendment rewrites Standard A to omit the superfluous reference to efficiency.

**Standard B.** The proposed revisions address two issues.

First, subsection (1) is simplified to eliminate superfluous phrases. Standard B recognizes that if it can be shown that personal services are “specialized, technical, peculiar, or unique,” then these services are not normal to the classified service.

Second, the proposed amendment adds subsection (2) when the appointing authority simply cannot hire enough qualified candidates, even if the personal services would otherwise normally be in the classified service. This concept is currently expressed in guidelines for Standard A and Standard B in Regulation 7.01.

**Standard C.** [No change proposed. However, note that Standard C addresses combined disbursements and, under proposed rule 7-2.1(b), if the predominant purpose of the combined disbursements is for equipment, materials, or facilities, the ancillary personal services will fall outside civil service jurisdiction.]

**Standard D:** [No change proposed].

**Standard E.** Repeal of this standard is proposed. See proposed rule 7-2.1(b), above.

## 7-~~43~~ Disbursements to Special Personal Service Employees

An appointing authority may make disbursements for personal services to a special personal services employee under the following conditions:

(a) **Standards.** The personal services meet ~~either~~ Standard A or Standard B in rule 7-~~32~~.

(b) **Procedures.** The disbursements for personal services have been ~~(4)~~ approved under the request procedures in rule 7-~~65~~ or ~~(2)~~ preauthorized under rule 7-7.

## 7-~~54~~ Disbursements to Independent Contractors

An appointing authority may make disbursements for personal services to an independent contractor under the following conditions:

(a) **Standards.** The personal services meet one or more of the standards in rule 7-~~32~~.



(b) **Procedures.** The disbursements for personal services have been ~~(4)~~ approved under the request procedures in rule 7-~~65~~, ~~(2) authorized under the decentralized review and approval procedures in rule 7-6~~, or ~~(3)~~ preauthorized under rule 7-7.

## **7-~~65~~ Procedure: Prior Written Approval by Civil Service Staff**

### **7-~~65~~.1 Procedure**

An appointing authority may submit to the department of civil service a request for approval to make disbursements for personal services outside the classified service. ~~to the department of civil service.~~ Civil service staff shall (1) receive and evaluate the request, (2) receive and evaluate information submitted by other interested parties, and (3) issue a written technical decision. The staff shall approve the request, with or without conditions, or shall deny the request.

### **7-6.2 Approval**

Civil service approval of a request to make disbursements for personal services outside the classified service must include the following:

(a) The maximum aggregate dollar amount the appointing authority is authorized to disburse for the requested personal services during the approved period.

(b) The specific personal services that the appointing authority is authorized to purchase outside the classified service with approved disbursements.

(c) The period during which the appointing authority is authorized to make approved disbursements.

1 (d) Any other requirement, condition, or restriction on the disbursements necessary to  
2 ensure that the appointing authority complies with article 11, section 5 of the  
3 constitution and the civil service rules and regulations.

**STAFF COMMENTS to proposed Rule 7-6.2:** The commission has issued decisions that clarify the scope and nature of civil service approval under Chapter 7 (and its predecessor, Rule 4-6). This amendment incorporates the commission's interpretations and states clearly the nature and extent of the civil service approval under rule 7-6. The amendment reinforces that civil service approval of a request is authorization to the appointing authority (1) to spend an aggregate maximum dollar amount (2) for particular personal services (3) over an approved period (4) subject to any additional requirement, condition, or restriction.

Subsequently, when civil service reviews the actual disbursements – in an audit or as the result of a complaint – civil service only reviews agency compliance with these items. Therefore, if the appointing authority makes actual disbursements within these limits established in advance, civil service will not later evaluate factors unrelated to the approval, such as the choice of vendor, the number or duration of contracts needed to disburse the funds, or the alleged quality of the services provided.

In addition, the items included in the civil service approval also represent the areas that may properly be the subject of a complaint to the state personnel director under rule 7-9.

## 1 **7-~~6.35.2~~ Effective Date of Staff Decision**

2 **(a) One interested party.** If the appointing authority is the only interested party par-  
3 ticipating in the staff review, the technical decision is effective upon its issuance, unless  
4 a later date is specified in the technical decision.

5 **(b) Two or more interested parties.**

6 **(1) Effective date.** If more than one interested party participates in the staff review,  
7 the technical decision is effective 14 calendar days after the date the technical  
8 decision is issued, unless a different date is specified in the technical decision or the  
9 state personnel director issues a stay.

10 **(2) Request for stay.** An interested party intending to appeal the technical decision  
11 may file a request that the state personnel director stay the effective date of the  
12 decision pending appeal. The request for a stay must be received by the director  
13 within 7 calendar days after the date the technical decision is issued. The director  
14 may stay the effective date of the technical decision pending a technical appeal if

1 the director determines that (1) it is unlikely that the request meets ~~one or more~~ any  
2 of the standards for approval and (2) a stay is in the best interest of the classified  
3 service.

**STAFF COMMENTS to Rule 7-6.3:** The proposed amendments establish a 7-day limit for an interested party to file a request for a stay. This will give the state personnel director 7 additional days to review the request and make a decision before the decision becomes effective. Under the current rule, a request theoretically could be filed only moments before the 14-day period expires and the director would not have adequate time to review the request before the decision became effective.

### 1 **7-~~6.45-3~~ Complaint Regarding Technical Decision**

2 An interested party who participated at the staff review may file a technical disbursement  
3 complaint as provided in rule 8-3 [Technical Complaints]. The technical complaint must be  
4 received by the department of civil service and all other interested parties within 14 calendar  
5 days after the date the technical disbursement decision is ~~mailed~~ issued.

**STAFF COMMENTS to proposed Rule 7-6.4:** The proposed amendment changes “mailed” to “issued.” This is consistent with the new uniform requirements of Regulation 8.06, *Computing Time and Filing Documents*, §5, “Delivery and Receipt of Documents in Civil Service Proceedings,” effective March 18, 2001.

## **7-6.5 Compliance**

An appointing authority shall comply with all requirements, conditions, and restrictions established in the civil service approval of a request to make or authorize disbursements for personal services outside the classified service. By way of example only, an appointing authority is prohibited from doing any of the following:

- (a) Disbursing funds in excess of the approved maximum aggregate dollar amount.
- (b) Disbursing funds for personal services other than approved personal services.
- (c) Disbursing funds for personal services performed outside the period approved for the disbursements.

(d) Failing to comply with any requirement, condition, or restriction established in the civil service approval.

**STAFF COMMENTS to proposed Rule 7-6.5:** The proposed amendment states the requirement that an appointing authority must comply with all the requirements, conditions, and restrictions established by civil service when it approved the request to make or authorize disbursements for personal services outside the classified service.

## ~~7-6—Procedure: Decentralized Approval without Prior Civil Service Review~~

### ~~7-6.1—Document Compliance~~

~~An appointing authority may make or authorize disbursements for personal services if the appointing authority documents its compliance with civil service rules and regulations prior to making any disbursements and the appointing authority gives notice of the contract or disbursements to the department of civil service, to employees, and to exclusive representatives of employees.~~

### ~~7-6.2—Training Required~~

~~An appointing authority shall not use the decentralized approval procedure until the department of civil service certifies in writing that the staff of the appointing authority has received adequate training in the required procedures. The department may also require additional periodic training at any later date to ensure continued compliance with the civil service rules and regulations as a condition of the use of the decentralized approval procedure.~~

### ~~7-6.3 — Documentation Required~~

~~The appointing authority shall document each of the following prior to making any disbursements:~~

~~(a) The standard or standards in rule 7-2 that the personal services meet.~~

~~(b) Details of the proposed contract that are sufficient to demonstrate clearly how the personal services meet one or more of the standards in rule 7-2.~~

~~(c) Any further documentation required in the regulations.~~

~~(d) A copy of each contract executed or effective as a result of this approval.~~

### ~~7-6.4 — Maintenance of Records~~

~~The appointing authority shall maintain the documents required by this rule for a period not less than 2 years after the end of the contract. The documents must be made available to the department of civil service for purposes of auditing compliance.~~

### ~~7-6.5 — Notice~~

~~As a condition of the use of the decentralized approval procedure, the appointing authority shall complete a form prescribed by the department of civil service and send a copy of the completed form to the department of civil service at least 14 calendar days before the contract is executed. At the same time, the appointing authority shall also post notice of the proposed contract in a central public location.~~

### ~~7-6.6 — Limitations~~

~~Notwithstanding any other civil service rule or regulation to the contrary, an appointing authority shall file a request and obtain prior civil service approval as required in rule 7-5 before making or authorizing disbursements for personal services in any of the following circumstances:~~

~~(a) Layoff of classified employee. One or more classified employees will be laid off or demoted as a result of the contract for personal services.~~

~~(b) Contract amount. The disbursements for personal services may exceed \$500,000 in a fiscal year or \$2,000,000 during the life of the contract.~~

~~(c) Number of contracts. The appointing authority has or will enter into six or more separate contracts for substantially the same personal services in a fiscal year.~~

### ~~7-6.7~~ — **Complaints**

~~Any complaint regarding the use of the decentralized review and approval process by an appointing authority may be brought only under the complaint procedures in rule 7-9.~~

**STAFF COMMENTS to proposed repeal of Rule 7-6:** The decentralized process has not been used in the four years since its approval due to pending litigation. Further experience with Chapter 7 during those four years suggests that it is not necessary. In addition, agencies have not expressed interest in having the decentralized process available. Therefore, staff recommends that it be repealed.

## **7-7      ~~Procedure:~~ Preauthorization Approval**

### **7-7.1      Publication of List**

The department of civil service ~~may~~shall establish and publish a list of personal services deemed to meet one or more of the standards of rule 7-~~32~~ without further review.

### **7-7.2      Use of Preauthorized Approval**

An appointing authority may make or authorize disbursements for any preauthorized personal services without submitting a request or obtaining prior written approval of the department of civil service under rule 7-6. When making or authorizing disbursements for preauthorized personal services, the appointing authority shall comply with all requirements,

1 conditions, and restrictions established by the department of civil service for the use of the  
2 list of the preauthorized personal services.

**STAFF COMMENTS to proposed Rule 7-7.2:** The proposed amendment states the requirement that an appointing authority must comply with all the requirements, conditions, and restrictions placed on the list of preauthorized personal services.

### 1 **7-7.3 Reporting**

2 As a condition of using the preauthorized list, the appointing authority shall report all dis-  
3 bursements for preauthorized personal services as required by statute and the civil service  
4 regulations.

### 5 **7-7.4 Additions to Preauthorized List**

6 An appointing authority seeking to add personal services to the list of preauthorized personal  
7 services may file a request with the department of civil service under the procedures  
8 authorized in rule 7-65. Civil service approval of a request to add personal services to the  
9 list of preauthorized personal services must include the following:

10 (a) A description of the particular type of personal services being added to the list of  
11 preauthorized personal services.

12 (b) The standard in rule 7-3 that the added personal services is deemed to satisfy.

13 (c) Any other requirement, condition, or restriction on the use of the preauthorization  
14 necessary to ensure that the appointing authority complies with article 11, section 5 of  
15 the constitution and the civil service rules and regulations.

**STAFF COMMENTS to proposed Rule 7-7.4:** The proposed amendment states the items that are included in the civil service approval of a request to add personal services to the preauthorized list.

## 7-7.5 Complaints or Appeals

Any complaint regarding the use of the preauthorized approval process or any disbursements for personal services made or authorized under the preauthorized approval process ~~must~~ may be brought ~~only~~ under the procedures authorized in rule 7-9. Any complaint regarding a technical decision to add personal services to the preauthorized list ~~may~~ must be brought ~~only~~ by an interested party under the technical appeal procedures in rule 8-3 [Technical Complaints].

**STAFF COMMENTS to proposed Rule 7-7.5:** The proposed amendments make clear that any complaint regarding the preauthorized process must be first brought to state personnel director for review. The purpose is to ensure that any complaint regarding an alleged violation of article 11, §5, of the Michigan constitution or the civil service rules or regulations will be brought to the attention of the civil service commission before any judicial review.

## 7-8 Emergency Disbursements

An appointing authority may authorize or make disbursements for personal services outside the classified service ~~by persons who are not classified employees~~ without prior civil service approval when an emergency occurs. The emergency personal services must not continue beyond ~~14~~ 28 calendar days without approval of the department of civil service. The department may approve continuation of emergency services for an additional period not to exceed 28 calendar days.

**STAFF COMMENTS to Rule 7-8:** Staff recommends that agencies facing an emergency be given an initial period of 28 calendar days (rather than 14) during which they can hire emergency workers without prior civil service approval.

## 7-9 Complaints and Investigations

### 7-9.1 Investigation by State Personnel Director

(a) Complaint required. Any person who alleges ~~may file a written complaint with the state personnel director~~ that an appointing authority has made or authorized



~~disbursements contract~~ for personal services outside the classified service ~~has been awarded by an appointing authority~~ in violation of article 11, section 5, of the constitution or a civil service rule or regulation must file a complaint with the state personnel director and serve a copy on the appointing authority and the state employer.

**(b) Examples of violations.** Alleged violations for which a complaint must be filed include, but are not limited to, the following:

**(1)** The appointing authority has made or authorized disbursements for personal services outside the classified service in violation of article 11, section 5, of the constitution.

**(2)** ~~7-9.2a~~ The appointing authority has made or authorized ~~entered into a contract~~ disbursements for personal services outside the classified service without obtaining ~~required civil service~~ approval required by the civil service rules or regulations.

**(3)** The appointing authority has made or authorized any of the following disbursements for personal services outside the classified service:

**(A)** Disbursements in excess of the maximum aggregate dollar amount approved by civil service.

**(B)** Disbursements for personal services other than those approved by civil service.

**(C)** Disbursements for personal services performed outside the period approved by civil service.

**(D)** Disbursements that do not comply with a requirement, condition, or restriction established in the civil service approval.

**(4b)** The appointing authority obtained civil service approval by fraud, material misrepresentation, or failure to disclose material facts.

(5e) The appointing authority made or authorized improper preauthorized disbursements for personal services. ~~under the decentralized review and approval procedure or the list of preauthorized personal services.~~

(6d) The appointing authority failed ~~or neglected~~ to report ~~a contract or~~ disbursements for personal services as required by law, including ~~or~~ the civil service rules ~~or~~ and regulations.

(7e) The appointing authority failed to document ~~create or maintain~~ adequately ly records ~~to properly document~~ its compliance with ~~these~~ the civil service rules and ~~the~~ regulations.

~~The complainant shall also serve a copy of the complaint on the appointing authority and the office of the state employer.~~

## 7-9.2 Action by State Personnel Director ~~Violations~~

After reviewing the complaint, If the state personnel director ~~determines that there is a meritorious basis for~~ may act on the complaint or may, ~~the director shall~~ appoint a person to conduct an inquiry and make a recommendation for action to the director. If the ~~state personnel~~ director finds that an appointing authority has made or authorized disbursements for personal services outside the classified service contrary to article 11, section 5, of the constitution or a civil service rule or regulation, ~~any of the following circumstances,~~ the director may disapprove disbursements for personal services or take other appropriate action to ensure compliance with the constitution and the civil service rules and regulations.;

## 7-9.3 Appeal of Director's Determination

A determination of the state personnel director under this rule 7-9 is final unless ~~the a party appointing authority to the inquiry~~ files an application for leave to appeal to the civil service commission under rule 8-7 ~~employment relations board~~ within 14-28 calendar days after the

1 date ~~of mailing of~~ the director's determination is issued. ~~Thereafter, the appeal procedures of~~  
2 ~~the employment relations board control.~~

**STAFF COMMENTS to Rule 7-9:** The proposal strengthens the complaint process.

**§7-9.1**

**(a) Complaint Required.** The amendments reiterate that any complaint of a violation of article 11, §5, of the Michigan constitution or a civil service rule or regulation must first be filed with the state personnel director.

**(b) Examples of Violations.** The rule has been reorganized to give examples of common particular types of violations that are subject to an investigation by the state personnel director. In particular, subsection (3) is added to mirror the specific language proposed in rule 7-6.2.

**§7-9.2 Action by the State Personnel Director.** The amendments reinforce the authority of the director to take appropriate remedial action for any violation article 11, §5, of the constitution or a civil service rule or regulation.

**§7-9.3 Appeal of Director's Determination.** The current rule permits an appeal of the director's decision to the civil service commission only by the appointing authority. The proposed amendments would also permit any other party, including the person filing the complaint and the state employer, to appeal a decision to the commission. Again, this provides the commission with an opportunity to review and comment on matters within its constitutional jurisdiction before a party seeks judicial relief. The time period to appeal is lengthened to 28 days to be consistent with all other commission appeals.

## 1 7-10 Audit and Enforcement

2 The department of civil service shall periodically audit ~~an~~ appointing authoritiesy to ensure  
3 that the ~~y appointing authority is are~~ complying with article 11, section 5, of the constitution  
4 and the civil service rules and regulations governing disbursements for personal services  
5 outside the classified service. If the state personnel director determines that an appointing  
6 authority has not substantially complied with article 11, section 5, of the constitution or the  
7 rules and regulations, the state personnel director ~~may is authorized~~ (1) ~~to~~ require the  
8 appointing authority to file a written request and ~~to~~ obtain prior written approval from the  
9 department of civil service for all disbursements for personal services outside the classified  
10 service and (2) ~~to~~ take such other action as will reasonably ensure that the appointing  
11 authority complies with article 11, section 5, of the constitution and the rules and regulations  
12 in the future.

**STAFF COMMENTS to Rule 7-10:** The proposed amendment clarifies that the state personnel director has broad authority to review agency compliance with article 11, §5, of the Michigan constitution as well as the civil service rules and regulations.

## 7-11 Contract Requirements

Every contract by a state agency that authorizes disbursements for personal services outside the classified service must contain a provision that the state is obligated to comply with article 11, section 5, of the constitution and applicable civil service rules and regulations. The provision must also give notice that, notwithstanding any other provision of the contract to the contrary, the state personnel director is authorized to disapprove contractual disbursements for personal services if the ~~state personnel~~ director determines that the contract or the disbursements violates article 11, section 5, of the constitution or applicable civil service rules and regulations. The failure of an appointing authority to require such a provision in a contract ~~for personal services~~ does not limit or restrict the authority of the civil service commission and the ~~state personnel~~ director to disapprove disbursements for personal services outside the classified service.

## 7-12 Limitations

### ~~7-12.1 Civil Service Does Not Approve Contracts~~

Approval by the department of civil service under this chapter does not ~~Nothing in these rules-relieves~~ an appointing authority of an ~~obligations~~ under any other law, or non-civil service rule, or regulation that may apply to a contract, ~~for personal services~~. Approval ~~of a request~~ by the department of civil service under this ~~rule-chapter~~ does not, ~~itself~~, constitute approval of any contract or ~~any~~ agreement by the state of Michigan under which an appointing authority makes or authorizes approved disbursements for personal services outside the classified service. ~~to be bound by the terms of any contract.~~

1 ~~7-12.2 — Limitation on Aggregate Disbursements~~

2 ~~Approval of a request by the department of civil service required by these rules only~~  
3 ~~authorizes the appointing authority to make disbursements for personal services to persons~~  
4 ~~outside the classified service for the proposed period of disbursements. The appointing~~  
5 ~~authority shall not make aggregate total disbursements for personal services over the pro-~~  
6 ~~posed period of disbursements that exceed the total amount approved by the department of~~  
7 ~~civil service without the further approval of the department.~~

8

**STAFF COMMENTS to Rule 7-12:** The proposed amendments to the remaining subsection are simply for clarification. Also, with the addition of proposed Rule 7-6.2, subsection 7-12.2 is redundant and repeal is recommended.

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[End of Chapter 7]

# CHAPTER 9

## DEFINITIONS

**STAFF NOTE to Rule 9-1:** In previous versions of the rules, the individual definitions were separately numbered (e.g., 9-1.1: *Actual-duty Time*, 9-1.2: *Adjudicating Officer*, etc.). In future versions of the rules, the definitions will not be separately numbered, but will only be placed in rule 9-1 in alphabetical order. This permits adding and deleting definitions in the future without requiring renumbering and the need to change rule references in the regulations.

### 9-1 Definitions

Unless the context clearly provides otherwise, the following terms in the civil service rules and regulations are defined as follows:

\* \* \*

#### ~~Contract for Personal Services~~

~~*Contract for personal services* means a contract between a state agency and a contractor pursuant to which the state agency is obligated to make disbursements from appropriated funds for the personal services of a person who is not a classified employee of the state.~~

**STAFF COMMENTS to proposed repeal of definition of “contract for personal services”:** This defined phrase has been replaced with the phrase “disbursements for personal services outside the classified service” and is no longer required.

## Contractor

**Contractor** means an independent contractor or special personal services employee who enters into a contract with a state agency to provide ~~for~~ personal services.

\* \* \*

## Disbursements for Personal Services outside the Classified Service

Disbursements for personal services outside the classified service means disbursements of appropriated funds by a state agency for the personal services of a person who is not a classified employee of the state.

**STAFF COMMENTS to definition of “disbursements for personal services outside the classified service”:** This phrase has been defined to replace the phrase “contract for personal services.” The phrase “contract for personal services” has been misinterpreted to suggest that civil service reviews “contracts.” Such is not the case. Civil service reviews requests to make disbursements for personal services outside the classified service.

## Grant

Grant means a congressional or legislative appropriation that is passed through a state agency directly to, and for the benefit of, the recipient of the grant.

**STAFF COMMENTS to proposed definition of “grant”:** The only current definition of “grant” is in Regulation 7.01. The definition is added as part of the proposed addition of §7-6.2(c).

## Independent Contractor

**Independent contractor** means an individual contractor or an employee of a contractor who provides personal services and who is not an employee of the state of Michigan.

\* \* \*

**Mixed Contract**

~~*Mixed contract* means a contract that authorizes disbursements both for personal services and for things that are not personal services.~~

\* \* \*

**STAFF COMMENTS to definition of “mixed contract”:** With the repeal of Standard E and the addition of Rule 7-2.1(b), this definition is no longer required. The concept of “combined disbursements” replaces “mixed contract” in proposed rule 7-2.1(b).

**Party**

*Party* means any of the following persons or organizations:

\* \* \*

**(d) *Party***, in a review of a technical disbursement decision, means any of the following:

- (1)** The appointing authority that files a request under rule 7-6 or 7-7 ~~to regarding disbursements contract~~ for personal services.
- (2)** An exclusive representative of a classified employee with a direct interest in the technical disbursement decision.
- (3)** A nonexclusively represented classified employee with a direct interest in the technical disbursement decision.
- (4)** A limited recognition organization appearing on behalf of a classified employee with a direct interest in the technical disbursement decision.
- (5)** The office of the state employer.
- (6)** Any other person or organization with a demonstrable special interest in the technical disbursement decision who (1) petitions to participate in the civil service staff review and (2) is authorized by the department of civil service to participate in the review.



\* \* \*

(f) *Party*, in an inquiry about a complaint filed with the state personnel director under rule 7-9, means any of the following:

(1) The person filing the complaint.

(2) The appointing authority that made or authorized the questioned disbursements.

(3) The office of the state employer.

(4) Any other person or organization with a demonstrable special interest in the complaint who (1) petitions the state personnel director to participate in the inquiry and (2) is authorized by the director to participate in the inquiry.

\* \* \*

## **Personal Services**

*Personal services* means work performed for the direct benefit of the state by an individual for compensation.

\* \* \*

## **Request**

*Request* means a request submitted by an appointing authority to the department of civil service under rule 7-~~65~~ [Procedure: Prior Written Approval by Civil Service Staff], for approval to make disbursements for personal services to a person who is not a classified state employee, or under rule 7-7 [Procedure: Preauthorization], to add personal services to the preauthorized list.

\* \* \*

## 1    **Technical Decision**

2    *Technical decision* includes each of the following individual decisions:

3    (a) *Technical classification decision* means a civil service staff decision classifying a  
4       position in the classified service.

5    (b) *Technical qualification decision* means a civil service staff decision determining the  
6       qualifications and fitness of a candidate for a position in the classified service.

7    (c) *Technical disbursement decision* means a civil service staff decision authorized under  
8       rule 7-6 or 7-7 approving or disapproving regarding disbursements for personal services.

9    (d) *Technical appointment decision* means (1) a decision of an appointing authority  
10       appointing a candidate to a position in the classified service or (2) a decision of civil  
11       service staff certifying or revoking an appointment to a position in the classified service.

**STAFF COMMENTS to definition of “technical disbursement decision”:** A “technical disbursement decision” includes approving or disapproving both (1) a request to make disbursements for personal service and (2) requests to add services to the preauthorized list. The proposed amendment simply clarifies that point.